

STATE SENATOR KITZENBERG
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EDITORIAL

ARE YOU TIRED OF OVERPAYING YOUR PHONE BILL?

by State Senator Sam Kitzenberg

SB 189 clarifies Public Service Commission authority to ensure that consumers are paying reasonable rates. It does this by ensuring the Commission can do something most people probably assume they can do; that is, conduct a rate case and require a utility to support its rates. Let me explain.

The Legislature requires our PSC to set rates for public utilities that are reasonable. Reasonable rates means rates that reflect costs plus a reasonable profit. All of this is established in a rate case process where the utilities have to justify the rates they propose to charge, based on their costs.

As you know, things change with time. When costs go up (or revenues go down), for example, a utility is entitled to ask the Commission to increase its rates. This is the typical situation. But, what happens when costs go down? There is a natural tendency for utilities to avoid PSC scrutiny of such circumstances. Not surprisingly, utilities in this situation have argued that the PSC has no authority to require them to justify maintaining their rates despite the changed basis in costs. I'll give you one current example.

Qwest is a regulated utility that has not filed a general rate case for many years. Why would they? Utilities such as Qwest file annual reports with the PSC designed to show changes in financial information. Qwest's last authorized overall cost of capital and return on equity were 10.44% and 12%, respectively. They have exceeded that for the last eight years. Their most recently reported overall return was 22%, and equity return was an eye-opening 67%. It has been calculated that, over the last ten years, Qwest may have overcollected roughly \$144 million.

The PSC has taken note of this situation with Qwest, and has attempted to get some justification for the rates being charged. Qwest has resisted, arguing that the PSC cannot require it to reestablish the basis for its current rates, but that someone else (like the PSC or MCC) must themselves make a case that rates are not reasonable, that is, in line with costs. This argument is now in the Montana Supreme Court, after the PSC received an adverse decision from a district court when Qwest tried to stop a financial review. I won't get into the details of that case here. Hopefully, the Commission will prevail but, in any event, this bill would clarify the PSC's authority.

Why shouldn't someone else have this so-called "burden of proof" in such a rate review? The answer has both practical and policy aspects. First, who has access to all the detailed information necessary to put together a complete rate case? The utility. Moreover, why is it appropriate to require a public utility to justify its rates, but then ignore the fact that circumstances change over time? This puts the utility too much in control of its regulation.

When a utility is underearning, it has an obligation to request and prove the need for a rate change. The Legislature has established a requirement for that, in order to protect consumers. When a utility may be overearning, we have no less of a reason and obligation to ensure that a utility is held accountable to justify the rates it is charging. SB 189 makes sure the PSC has that authority and that its oversight is not a one-way street.

(Sen. Kitzenberg, D-Glasgow, is the chairman of the Montana Consumer Counsel Committee meeting on this bill, SB 189--Clarify PSC Authority, before the Senate Natural Resources and Energy Committee, on January 26, 3 p.m., Room 422, State Capitol Building.)

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